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PATENT
HMD2000-1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Thomas N. Giaccherini, et al.

Examiner: Ly, Anh Vu H.

Serial No.: 09/579,324

Group Art Unit: 2667

Title: **Method for Utilizing
Excess Communications Capacity**

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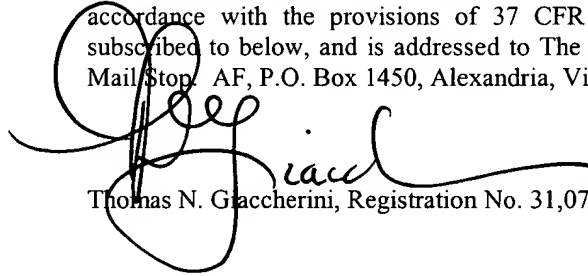
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Filed: 25 May 2000

Technology Center 2600

CERTIFICATE OF MAILING UNDER 37 CFR 1.8

The undersigned hereby certifies that this document is being transmitted to the United States Patent Office by U.S.P.S. First Class Mail in accordance with the provisions of 37 CFR Section 1.8 on the date subscribed to below, and is addressed to The Commissioner for Patents, Mail Stop AF, P.O. Box 1450, Alexandria, Virginia 22313-1450.



Thomas N. Giaccherini, Registration No. 31,075

24 Aug 04.
Date

**REQUEST FOR RECONSIDERATION
AFTER FINAL REJECTION**

The Commissioner for Patents
Mail Stop: AF
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

The Applicants submit this Response after receiving to the Second Office Action dated 24 June 2004. The Second Office Action provided a shortened statutory period for response, which will expire on 24 September 2004, but the two month period for responding after a Final Rejection will expire on 24 August 2004.

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Section A. Application History & Disclosure of Prosecution of a Related European Patent Application

In the First Office Action mailed on 2 October 2003, the Patent Office issued a non-final rejection of Pending Claims 1-24 under 35 USC Sections 112, 102 and 103 as being unpatentable over U.S. Patent No. 6 029 045 issued to Picco et al.

The Applicants filed a First Amendment on 2 April 2004. A Final Rejection of Claims 1-26 was mailed on 24 June 2004.

In accordance with the recent *Dayco* decision, the Applicants hereby report the progress of their prosecution of a corresponding European Patent Application No. 01939003.8. The EPO Examiner issued an Official Action dated 22 January 2004 based on an International Search Report dated 20 September 2002. A copy of this Official Action is enclosed with this Response to the Second U.S. Office Action. The EPO has based its rejections upon the Lyons and Hughes Aircraft references. These references were disclosed to the U.S. Patent Office in the Applicants' First Disclosure Statement, which was submitted to the U.S. Patent Office on 25 January 2002. Another copy of the First Disclosure Statement is submitted with this Request for Reconsideration.